Remarks:

Reconsideration of the application, as amended herein, is respectfully requested.

Claims 70 - 115 are presently pending in the application. Claims 70, 84, 91, 96 - 102, and 115 have been amended.

In item 3 of the above-identified Office Action, claims 70 - 77, 81 - 82, 84 - 86, 91 - 100, 102 - 107, 111 - 113 and 115 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U. S. Patent No. 5,390,238 to Kirk et al ("**KIRK**").

In item 5 of the Office Action, claims 78 - 80, 83, 87 - 90, 108 - 110 and 113 were rejected under 35 U.S.C. § 103(a) as being obvious over **KIRK** in view of U. S. Patent No. 5,774,879 to Custy ("**CUSTY**"). In item 6 of the Office Action, claim 101 was rejected under 35 U.S.C. § 103(a) as being obvious over **KIRK** in view of U. S. Patent No. 5,642,731 to Kehr ("**KEHR**"). In item 7 of the Office Action, claim 114 was rejected under 35 U.S.C. § 103(a) as being obvious over **KIRK**.

Applicant respectfully traverses the above rejections.

More particularly, the prior art references cited in the Office Action, taken alone, or in combination, neither teaches, nor suggests an electronic prescription system, as particularly claimed by Applicant.

I. Contrary to the Examiner's position, Applicant believes that col. 3 of KIRK, lines 20 - 42 neither teaches, nor suggests, the electronic display, creation or transmission of prescription information.

As background, Applicant would like to start by clarifying a point regarding the disclosure of the **KIRK** reference. Applicant's instant claims, on the whole, relate to a computerized prescription system and/or a computer program product or software system relating to prescription information. In connection with the rejections of many of Applicant's claims, the Office Action states that Figure 2 and col. 3, lines 20 - 42 of **KIRK**, among others, discloses certain computerized limitations of Applicant's claims. However, Applicant respectfully disagrees.

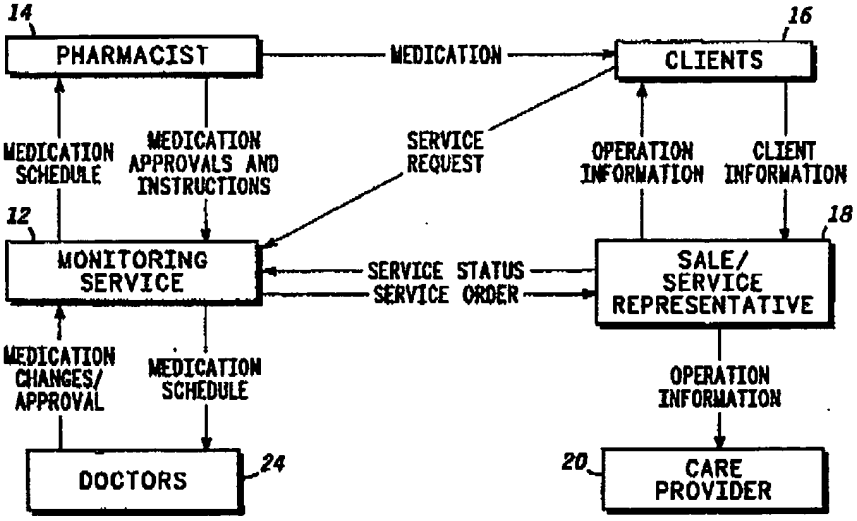
More particularly, nothing in Fig. 2 of **KIRK**, or in col. 3 of **KIRK**, lines 20 - 42, teaches or suggests **prescription information being electronically created, displayed or transmitted**. Rather, col. 3 of **KIRK**, lines 20 - 42, state:

> FIG. 2 illustrates a block diagram of the indirect interfaces for the health support system illustrated in FIG. 1. Doctors 24 provide medication information

> including medication changes to monitoring service 12 and pharmacist 14. Pharmacist 14 provides medication information to clients 16. Medication approval and instruction information is sent from pharmacist 14 to monitoring service 12 in the form of a service request. Monitoring service 12 checks the medication change order from doctors 24 against the service request from client 16. Client 16 information is sent from clients 16 to sales and service representatives 18. A service status is generated from sales and services representatives 18 to monitoring service 12. In response, monitoring service 12 provides a service order to sales and service representatives 18. Monitoring service 12 also receives medication approval instructions and prescription number information from pharmacist 14, and medication approval information from doctors 24. Monitoring service 12 also generates a medication schedule to doctors 24 and pharmacist 14. The sales and service representative 18 provides operation information to care provider 20 and to the client 16.

Nothing in the above disclosure from **KIRK** teaches or suggests any **electronic** communications between: the pharmacist and the doctor; the pharmacist and the clients; the pharmacist and the monitoring service 12; the doctor and the monitoring service; the clients and the sales and service representatives; and the care provider and the client. In fact, the above-cited portion of **KIRK** neither teaches, nor suggests, **that the above communications involve a computer or computer medium, in any way**. This is further supported by Fig. 2, itself, which is reproduced herebelow, for convenience.

FIG. 2



Rather, the information between doctors, clients, salespersons and pharmacists can be, **entirely**, enacted via telephone or paper, and entered into the electronic system of Fig. 3, manually, by an Operator working for the Monitoring Service (12 of Fig. 2). This interpretation is actually supported in **KIRK**, in connection with Fig. 5, which states in col. 5 of **KIRK**, line 37 - 38, **the Operator of the KIRK system acts as an intermediary between the voice phone network 102 and the processor 106.** Fig. 5 of **KIRK** is additionally reproduced herebelow, as a convenience.

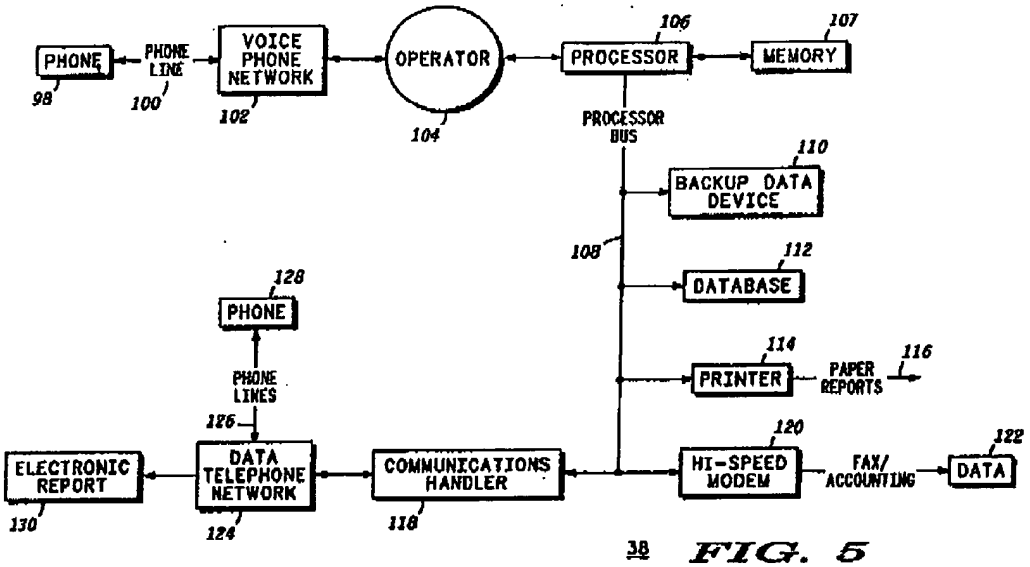


FIG. 5

As such, contrary to the Office Action, Applicant believes that the col. 3 of KIRK, lines 20 - 42 has absolutely no disclosure relating to the electronic display, creation or transmission of prescription information.

Further, that the prescribing physicians of KIRK don't have direct electronic access to the central servers 38 of KIRK is further supported in col. 5 of KIRK, lines 40 - 54, which states:

> Because the health support unit 30 is in the home, a great deal of medication feedback data and home living data may be obtained. The data obtained during interaction with the patient 32 can be forwarded to the central server 38 either in analyzed form or in raw form. The central server 38 can report the results of the analysis of patient 32 status to a doctor 24, care provider 20, or local monitoring service 12. Data of medical interest includes patient 32 data trends,

> daily activity levels, voice degradation, and medication compliance. By reporting to the doctor 24 on an advisory basis (or as required by the doctor's instructions), a closed loop system of patient care is realized. **The data can be transmitted to the doctor 24 via facsimile, paper request, file transfer, or orally via the central station monitor.** [emphasis added by Applicant]

As can be seen above, the **physician** is not permitted to **electronically interact (i.e., bilaterally)** with the computers, software and/or databases of **KIRK.**

II. Neither KIRK, nor the cited CUSTY reference, teaches or suggests providing access to information about pharmaceuticals arranged by medical conditions for which the pharmaceuticals are suitable for treating.

Applicant's independent claims 70, 96, and 102 require, among other limitations, providing access to information about pharmaceuticals **arranged by medical condition** for which the pharmaceuticals are suitable for treating.

For example, Applicant's claims 70, recites, among other limitations:

> at least one user computer, said user computer having a graphical user interface facilitating fulfillment of electronic prescription information and providing access to:
>
> . . .
>
> (2) **information about pharmaceuticals arranged by medical conditions for which the pharmaceuticals are suitable for treating;**

Claim 96 recites, among other limitations:

> a computer program stored on said memory medium, said computer program containing instructions for capturing prescription information and providing access to:
>
> . . .
>
> (2) **information about pharmaceuticals arranged by medical conditions for which the pharmaceuticals are suitable for treating.** [emphasis added by Applicant]

Applicant's claim 102 recites, among other limitations:

> at least one user computer, said user computer having a graphical user interface permitting capture of prescription information and providing access to all of:
>
> . . .
>
> (2) information about **pharmaceuticals arranged by medical conditions for which the pharmaceuticals are suitable for treating;** [emphasis added by Applicant]

As such, claims 70, 96 and 102 link a electronically link pharmaceuticals to the medical or patient condition for which they are used to treat. More particularly, claims 70, 96 and 102 provide access to information about pharmaceuticals, **arranged by medical condition.**

However, **KIRK** neither teaches, nor suggests, electronically linking information about a pharmaceutical **to a medical or patient condition.** **KIRK** certainly does not teach or suggest providing access to information about pharmaceuticals **arranged**

by medical conditions for which the pharmaceuticals are suitable for treating, as required by claims 70, 96 and 102. Additionally, **KIRK** fails to teach or suggest providing drug formulary information that provides the pharmaceuticals **by the drug formulary's preference for treating a particular patient condition**, as required by claims 100 and 101.

That **KIRK** does not teach or suggest the electronic linkage of pharmaceutical with medical or patient condition is supported in the Office Action. More particularly, page 10 of the Office Action states, in part:

> Claims 78 - 80, 83, 87 - 90, 108 - 110 and 113 are directed towards customized methods of arranging and sorting data. **This feature is not taught in Kirk**, however, it is well known in the art as evidenced by Custy (Col. 15, Ln. 38-53). At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the health support system of Kirk with the customized data arranging and sorting feature as taught in Custy with the motivation of providing the user with a means of producing customized reports or modifying existing reports, as recited in Custy (col. 39-41).

Applicant respectfully disagrees that **either** of the **KIRK** or **CUSTY** references teaches or suggests providing access to information on pharmaceuticals arranged by patient condition. As such, the **KIRK** and **CUSTY** references, alone or in combination, do not render obvious Applicant's invention of claims 70, 96 and 102.

First, **KIRK** is primarily interested in ensuring that patients take their prescribed pharmaceuticals and that their general wellness is monitored. See **KIRK**, col. 1, lines 30 - 35; lines 41 - 49. As disclosed in Section I, above, **KIRK** neither teaches, nor suggests, **permitting interactive electronic access to the system by the prescriber**. As such, there is not only no teaching or suggestion in **KIRK** of providing access to information on pharmaceuticals arranged by medical or patient condition, **there is also a complete lack of motivation to so modify KIRK**. In **KIRK**, the prescriber does not have interactive access to the computer system. As such, **there is no need in KIRK to provide anyone with information on pharmaceuticals arranged by medical or patient condition**.

Nor does **CUSTY** teach or suggest electronically providing information on pharmaceuticals based on the medical or patient condition to be treated, as stated in the Office Action. Rather, **CUSTY** discloses an automated **financial instrument** processing system. Col. 15 of **CUSTY**, lines 38-53, cited in the Office Action as allegedly modifying **KIRK**, states:

> The data may be formatted, for example, as an ASCII delimited or ASCII fixed data file. In step 140, the user also has the option to define new customized reports or modify existing report definitions. If the user selects this option, the user proceeds to step 148 which asks the user to input the header for the report. The header for the report is a general

> description of the data to be presented in the report. The method then proceeds to step 150 where all the fields that are available to the user are presented. The user then selects which fields are to be included in the report. The method then proceeds to step 152 where the user specifies the sort order, selection criteria, and other field definition selections for the particular report being configured. For example, the user can elect to sort on a particular field and select only data records having a field value within particular range of values.

CUSTY, like **KIRK**, neither teaches, nor suggests, electronically linking (i.e., arranging, identifying, etc.) information about pharmaceuticals with medical or patient conditions with which they are used to treat. The cited portion of **merely relates to preparing reports on financial instruments**. **CUSTY** does not relate to, or make mention of, either pharmaceuticals or patient/medical conditions. Nor does **KIRK**. As such, even in combination, the **KIRK** and **CUSTY** references do not render obvious Applicant's claims 70, 96, and 102.

Further, in order to modify one reference with another, there must be provided, in those references, some motivation for the modification. There is no **motivation** to modify **KIRK** with **CUSTY** as stated in the Office Action because, as stated above, the information arranged by patient or medical condition is of **primary interest to the prescriber, who does not have interactive access to the system of KIRK**. There is no motivation to modify **KIRK**, as suggested in the Office Action.

Further, as discussed above, even if their were some motivation to modify **KIRK**, the **CUSTY** reference, taken in combination with **KIRK** would still not teach or suggest Applicant's invention of claims 70, 96, and 102 since **both cited references** fail to teach or suggest **arranging information about pharmaceuticals by patient condition.**

The **KEHR** reference, cited in the Office Action, in combination with **KIRK**, against claim 101, does not cure the above deficiencies of the **KIRK** and **CUSTY** references.

As such, Applicant's independent claims 70, 96, and 102 are believed patentable over the references cited in the Office Action.

III. The KIRK, KEHR, and CUSTY references neither teach, nor suggest, displaying prescription information including a patient condition associated with a prescription.

Further, Applicant's amended claim 84 recites, among other limitations:

> displaying prescription information, **including a patient condition associated with a prescription,** using a computer interface; [emphasis added by Applicant]

Similarly, Applicant's amended claim 97 recites, among other limitations:

> said computer program containing instructions for displaying prescription information, **including a patient condition associated with a prescription,** which has been formatted for communications using a computer interface, and for receiving said prescription information at a pharmacy over a communications link to be filled. [emphasis added by Applicant]

Further, Applicant's amended claim 98 recites, among other limitations:

> b. a computer program stored on said memory medium, said computer program containing instructions for interrogating databases expected to contain information about a patient based on a patient's relationship with the provider of that database and for assembling patient information into a chronologically current version of said patient's prescription history, **said patient's prescription history including at least one medical condition of the patient associated with at least one prescription.** [emphasis added by Applicant]

As mentioned above, in Section II, none of the references cited in the Office Action electronically link a pharmaceutical to a patient condition. Similarly, none of the cited references (**KIRK**, **CUSTY**, or **KEHR**) teach or suggest **displaying, providing or accessing prescription information, including a patient condition associated with a prescription,** among other limitations of Applicant's independent claims 84, 97 and 98. As such, Applicant's independent claims 84, 97 and 98 are believed to be patentable over the cited references.

IV. The KIRK, KEHR, and CUSTY references neither teach, nor suggest, providing access to a patient's medical history including medical condition of a patient and thereapeutic agents used to treat that medical condition.

Applicant's claims 91, 99 and 115 recite computerized prescription systems (claims 91 and 115) or a computer program product (claim 99) which, among other limitations, permit access to:

(1) information about a patient's medical history, including at least one medical condition of a patient; and

(2) information about therapeutic agents prescribed for at least said medical condition; and

(3) information about individual prescriber activity.

As mentioned above, in Section III, none of the references cited in the Office Action (**KIRK**, **CUSTY**, or **KEHR**) teach or suggest displaying, providing or accessing prescription information, including a patient condition associated with a prescription, as required by Applicant's independent claims 84, 97 and 98. Similarly, none of the references cited in the Office Action information about a patient's medical history, **including at least one medical condition of a patient** and

information about therapeutic agents **prescribed for at least that medical condition**, among other limitation of Applicant's claims 91, 99 and 115.

As such, Applicant's independent claims 91, 99 and 115 are believed to be patentable over the cited references.

V. Among other limitations of Applicant's claims 100 and 101, KIRK fails to teach or suggest providing drug formulary information to ensure an electronic prescription is filled with a benefit plan recommended drug.

In the Office Action, Applicant's claim 100 was rejected as anticipated by **KIRK**. Applicant's claim 101 was rejected as allegedly being obvious over **KIRK** and **KEHR**. Applicant respectfully disagrees.

More particularly, Applicant's claims 100 and 101 recite, a prescription system prescription system including, among other limitations:

> b) **drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences to ensure that the electronic prescription is filled with a benefit plan recommended drug.** [emphasis added by Applicant]

KIRK neither teaches, nor suggests, identifying at least one of multiple drugs as a patient's **drug benefit provider's** drug formulary preferences, to ensure that the electronic

prescription is filled with **a benefit plan** recommended drug. A **drug benefit provider**, as used in the instant patent, is different from a drug provider or pharmacist. Rather, in the instant application, a drug **benefit** provider is one that provides the patient's **benefits**, such as an insurance company. As such, claims 100 and 101 require providing information as to which drugs the **drug benefit provider** (i.e., not the prescriber/physician, not the pharmacist) prefers for treating a medical condition, to ensure that the prescription is filled using a **benefit plan** approved drug. That the **drug benefit provider is not** the physician/prescriber or the pharmacist is supported by the rewritten paragraph (see, preliminary amendment filed in the instant case, pages 3 - 4) beginning at page 3, line 17, which states:

> As used herein, the term "drug formulary" refers to a list of preferred drugs contained in a drug benefits plan issued by a drugs benefit provider to a given patient. Drug formularies are specific to groups of patients and vary in content as between one drug benefit provider and another and one patient group and another. Drug formulary information is usually determinative of the cost-effectiveness of a prescription. **Unwitting failure by a prescriber to follow formulary guidelines can impose unnecessary or unexpected cost burdens on the patient, or their benefits provider, and lead to poor patient compliance and aggravating and time-consuming disputes.** The cost in dollars of non-compliance with drug formulary guidelines **to benefit-providing corporations,** insurers health maintenance organizations and government providers, for example MEDICAID and MEDICARE, can be enormous. The cost of poor patient compliance may ultimately increase the total cost of care by generating a more serious, expensive adverse health

> outcome (emergency room, visit or hospital admission or death). [emphasis added by Applicant]

Clearly, the drug benefit provider is **not** the physician/prescriber and, absent Applicant's claimed drug formulary information, physician/prescriber approved drugs are not necessarily drug benefit provider approved drugs.

The Office Action states at the top of page 8 that the drug benefit provider is disclosed in col. 3 of **KIRK**, lines 20 - 42. Applicant respectfully disagrees. As already quoted above in Section I, the cited portion of **KIRK** states:

> FIG. 2 illustrates a block diagram of the indirect interfaces for the health support system illustrated in FIG. 1. Doctors 24 provide medication information including medication changes to monitoring service 12 and pharmacist 14. Pharmacist 14 provides medication information to clients 16. **Medication approval and instruction information is sent from pharmacist 14 to monitoring service 12 in the form of a service request.** Monitoring service 12 checks the medication change order from doctors 24 against the service request from client 16. Client 16 information is sent from clients 16 to sales and service representatives 18. A service status is generated from sales and services representatives 18 to monitoring service 12. In response, monitoring service 12 provides a service order to sales and service representatives 18. **Monitoring service 12 also receives medication approval instructions and prescription number information from pharmacist 14, and medication approval information from doctors 24.** Monitoring service 12 also generates a medication schedule to doctors 24 and pharmacist 14. The sales and service representative 18 provides operation information to care provider 20 and to the client 16.

No where in **KIRK** does it teach or suggest that medication approval is related to a **drug benefit providers** formulary preferences. **KIRK** neither teaches, nor suggests, providing "**drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences**", as required by claims 100 and 101. **KIRK** certainly does not teach or suggest any measure "**to ensure that the electronic prescription is filled with a benefit plan recommended drug**", as required by claims 100 and 101.

Neither the **KEHR** reference, cited in the Office Action in combination with **KIRK** against claim 101 for disclosing a drug contraindication review routine, nor the **CUSTY** reference, cited against other dependent claims, cure the above deficiencies of the **KIRK** and references.

As such, Applicant's claims 100 and 101 are believed patentable over the cited references.

VI. Among other limitations of Applicant's claims 70, 91, 99, 102 and 115, KIRK fails to teach or suggest a graphical user interface.

More particularly, claim 70 recites, among other limitations:

> at least one user computer, said user computer **having a graphical user interface facilitating fulfillment of**

> **electronic prescription information** . . . [emphasis added by Applicant]

Applicant's independent claim 91 similarly recites, among other limitations:

> at least one user computer, said user computer **having a graphical user interface permitting display of prescription information received from a prescriber** . . . [emphasis added by Applicant]

Applicant's independent claim 99 recites, among other limitations:

> b. a computer program stored on said memory medium, said computer program containing instructions for implementing **a graphical user interface permitting display of prescription information** . . .

Applicant's independent claims 102 and 115 both recite, among other limitations:

> at least one user computer, said user computer **having a graphical user interface permitting capture of prescription information** . . . [emphasis added by Applicant]

Among other limitations of Applicant's claims, the **KIRK** reference neither teaches, nor suggests, using a **graphical** user interface to facilitate fulfillment of, display and/or capture prescription information.

Although **KIRK** discloses local central servers 38, a portable computer 48, health support units 30 and remote modules 31,

KIRK does not disclose any specific details about those units, relating to the specific configuration of their **user interfaces**. An "interface 85" referenced in connection with Fig. 4 and health support units 30 is referred to in col. 4, lines 3 - 5 as possibly being "an RS422 interface, providing an interface for system expansion as well as an additional access point to system and patient data" (i.e., a **communications** interface). As such, **KIRK** neither teaches nor suggests, among other limitations, the particularly claimed **graphical user interface** of claims 70, 91, 99, 102 and 115. As such, Applicant's claims 70, 91, 99, 102 and 115 are believed to be further patentable over **KIRK**.

VII. Conclusion.

It is accordingly believed that none of the references, whether taken alone or in any combination, teach or suggest the features of claims 70, 84, 91, 96 - 102 and 115. Claims 70, 84, 91, 96 - 102 and 115 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claims 70, 84, 91 or 102.

In view of the foregoing, reconsideration and allowance of claims 70 - 115 are solicited.

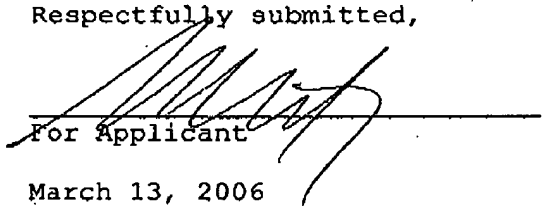
In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

Additionally, please consider the present as a petition for a one month extension of time, and please provide a one month extension of time, to and including, February 21, 2006 to respond to the present Office Action.

The extension fee for response within a period of one (1) month pursuant to Section 1.136(a) in the amount of $120.00 in accordance with Section 1.17 is enclosed herewith.

Please provide any further extensions of time and charge any further fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Robert M. Schwartz, P.A., No. 19-0734.

Respectfully submitted,



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For Applicant

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